

1 Alan Himmelfarb (Cal. Bar No. 90480)
 LAW OFFICES OF ALAN HIMMELFARB
 2 2757 Leonis Blvd
 Los Angeles, CA 90058
 3 Telephone: (323) 585-8696
 Fax: (323) 585-8198
 4 consumerlaw1@earthlink.net

5 Scott A. Kamber
 Ethan Preston
 6 KAMBER & ASSOCIATES, LLC
 11 Broadway, 22d Floor
 7 New York, NY 10004
 Telephone: (212) 920-3072
 8 Fax: (212) 202-6364
 skamber@kolaw.com
 9 epreston@kolaw.com

10 Richard A. Lockridge
 Robert K. Shelquist
 11 Yvonne M. Flaherty
 LOCKRIDGE GRINDAL NAUEN P.L.L.P.
 12 100 Washington Avenue South, Suite 2200
 Minneapolis, MN 55401
 13 Telephone: (612) 339-6900
 Fax: (612) 339-0981
 14 rlockridge@locklaw.com
 rkshelquist@locklaw.com
 15 yflaherty@locklaw.com

16 *Counsel for Dennis Dilbeck*

17 **IN THE UNITED STATES DISTRICT COURT**
 18 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

19 NETFLIX, INC. a Delaware corporation,

20 Plaintiff,

21 v.

22 BLOCKBUSTER INC., a Delaware corporation,
 23 and DOES 1-50,

24 Defendants.

25 DENNIS DILBECK, an individual, on his own
 behalf and on behalf of all others similarly situated,

26 v.

27 NETFLIX, INC. a Delaware corporation,

28 Defendant.

No. C 06 2361 WHA JCS
 Judge William Alsup

No. C 07-00643 PVT
 Magistrate Judge Patricia V. Trumbull

**ADMINISTRATIVE MOTION TO
 CONSIDER WHETHER CASES
 SHOULD BE RELATED UNDER
 CIVIL L.R. 3-12**

**ADMINISTRATIVE MOTION TO CONSIDER
WHETHER CASES SHOULD BE RELATED UNDER CIVIL L.R. 3-12**

Dennis Dilbeck, Plaintiff in case No. C 07-00643 PVT, *Dilbeck v. Netflix, Inc.*, moves the Court pursuant to Northern District of California Civil L.R. 3-12 and 7-11 to consider whether the following cases should be related:

1. *Netflix, Inc. v. Blockbuster Inc.*, No. C 06 2361 WHA JCS (N.D. Cal. filed Apr. 4, 2006); and
2. *Dilbeck v. Netflix, Inc.*, No. C 07-00643 PVT (N.D. Cal. filed January 31, 2007).

Local Rule 3-12 provides that an action is related to another when they “concern substantially the same parties, property, transaction or event; and [i]t appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.” As Dilbeck's previous motion to intervene explained at length, there is a substantial overlap in the facts at issue in Blockbuster's *Walker Process* antitrust counterclaim and Dilbeck's *Walker Process* antitrust complaint. Both claims allege that Netflix obtained U.S. Patents Nos. 6,584,450 and 7,024,381 through fraud. Blockbuster's counterclaim alleges lost profits and lost goodwill arising Netflix's *Walker Process* violation, which arise from Netflix's use of its Patents to delay Blockbuster's legitimate competition with Netflix. (Blockbuster Countercl. ¶¶ 108, 117.) Dilbeck's complaint concerns not only Blockbuster's delay in competing with Netflix, but the Patent's effect of restraining *all competitors* to Netflix, and the monopolistic overcharges Netflix thereby secured. Consequently, there are grounds for the Court to consider whether cases Nos. C 06 2361 WHA JCS and C 07-00643 PVT are related under Civil L.R. 3-12(b).

DATED: February 7, 2007

By: /s/Alan Himmelfarb

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11 Minneapolis, MN 55401
12 Telephone: (612) 339-6900
13 Fax: (612) 339-0981
14 rlockridge@locklaw.com
15 rkshelquist@locklaw.com
16 yflaherty@locklaw.com

CERTIFICATE OF SERVICE

Pursuant to 28 U.S.C. §1746, I hereby certify that on February 7, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached attorney list for case No. C 06 2361 WHA JCS, and that this filing will notify the only other party in case No. C 07-00643 PVT.

DATED: February 7, 2007

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